

CO/L/1/23-24

Decision of the Certification Officer on an application to be entered on the list of trade unions made under Section 3 of the Trade Union and Labour Relations (Consolidation) Act 1992

International Alliance of App-Based Transport Workers

Date of Decision

7 March 2024

Contents

Decision	3
Background.....	3
The relevant statutory provisions	4
Policy on the listing of international organisations.....	8
IAATW's application.....	8
Annexe A: the policy	11

Decision

1. I reject the application for International Alliance of App-Based Transport Workers to be entered on the list of trade unions which I keep pursuant to Section 2 of the Trade Union and Labour Relations (Consolidation) Act 1992.

Background

2. I received an application, on 17 March 2023, from Bates Wells Solicitors on behalf of International Alliance of App-Based Transport Workers (“IAATW”) to be entered on the list of the trade unions pursuant to Section 2 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”).
3. Having made an initial assessment of the application and supporting information, my office made enquiries of IAATW in order to assist me in understanding whether the organisation met the statutory definition of a trade union in Section 1 of the 1992 Act and, specifically, the definition of a federated trade union in Section 1 (b) of the 1992 Act. IAATW’s main points in reply to these enquiries are summarised in in this decision. Bates Wells indicated by an e-mail of 17 July 2023 that counsel had been instructed to provide an opinion in support of IAATW’s listing application. I have not seen a copy of that advice.
4. My office wrote to IAATW on 20 December 2023 informing the organisation of my preliminary decision that it did not meet the statutory definition of a federated trade union. The letter invited IAATW to make any further submissions the organisation wished to make by 10 January 2024 after which I would reach a final submission based on the information provided. No further submissions were received as of the date of this decision.

The relevant statutory provisions

5. The statutory provisions which are relevant for the purposes of this application are as follows:-

The Trade Union and Labour Relations (Consolidated) Act 1992:

Section 1 Meaning of “trade union”

In this Act a “trade union” means an organisation (whether temporary or permanent)—

(a) which consists wholly or mainly of workers of one or more descriptions and whose principal purposes include the regulation of relations between workers of that description or those descriptions and employers or employers’ associations; or

(b) which consists wholly or mainly of—

(i) constituent or affiliated organisations which fulfil the conditions in paragraph (a) (or themselves consist wholly or mainly of constituent or affiliated organisations which fulfil those conditions), or

(ii) representatives of such constituent or affiliated organisations,

and whose principal purposes include the regulation of relations between workers and employers or between workers and employers’ associations, or the regulation of relations between its constituent or affiliated organisations.

Section 2 The list of trade unions

(1) The Certification Officer shall keep a list of trade unions containing the names of—

(a) the organisations whose names were, immediately before the commencement of this Act, duly entered in the list of trade unions kept by him under section 8 of the Trade Union and Labour Relations Act 1974, and

(b) the names of the organisations entitled to have their names entered in the list in accordance with this Part.

(2) The Certification Officer shall keep copies of the list of trade unions, as for the time being in force, available for public inspection at all reasonable hours free of charge.

(3) A copy of the list shall be included in his annual report.

(4) The fact that the name of an organisation is included in the list of trade unions is evidence (in Scotland, sufficient evidence) that the organisation is a trade union.

(5) On the application of an organisation whose name is included in the list, the Certification Officer shall issue it with a certificate to that effect.

(6) A document purporting to be such a certificate is evidence (in Scotland, sufficient evidence) that the name of the organisation is entered in the list.

Section 3 Application to have name entered on the list

(1) An organisation of workers, whenever formed, whose name is not entered in the list of trade unions may apply to the Certification Officer to have its name entered in the list.

(2) The application shall be made in such form and manner as the Certification Officer may require and shall be accompanied by—

(a) a copy of the rules of the organisation,

(b) a list of its officers,

(c) the address of its head or main office, and

(d) the name under which it is or is to be known,

and by the prescribed fee.

(3) If the Certification Officer is satisfied—

(a) that the organisation is a trade union,

(b) that subsection (2) has been complied with, and

(c) that entry of the name in the list is not prohibited by subsection (4),

he shall enter the name of the organisation in the list of trade unions.

(4) The Certification Officer shall not enter the name of an organisation in the list of trade unions if the name is the same as that under which another organisation—

(a) was on 30th September 1971 registered as a trade union under the Trade Union Acts 1871 to 1964,

(b) was at any time registered as a trade union or employers' association under the Industrial Relations Act 1971, or

(c) is for the time being entered in the list of trade unions or in the list of employers' associations kept under Part II of this Act,

or if the name is one so nearly resembling any such name as to be likely to deceive the public.

Section 296 Meaning of worker and related expressions

(1) In this Act worker means an individual who works, or normally works or seeks to work—

(a) under a contract of employment, or

(b) under any other contract whereby he undertakes to do or perform personally any work or services for another party to the contract who is not a professional client of his, or

(c) in employment under or for the purposes of a government department (otherwise than as a member of the naval, military or air forces of the Crown) in so far as such employment does not fall within paragraph (a) or (b) above.

(2) In this Act employer, in relation to a worker, means a person for whom one or more workers work, or have worked or normally work or seek to work.

(3) This section has effect subject to sections 68(4), 116B(10), 145F(3) and 151(1B).

Section 301 Extent

(1) This Act extends to England and Wales and (apart from section 212A(6)) to Scotland.

(2) The following provisions of this Act extend to Northern Ireland—

(a) sections 13 and 14 (provisions as to property held in trust for trade union), and section 129 (application of provisions to employers' associations) so far as it applies those sections;

(b) Chapter VI of Part I (application of funds for political objects), except sections 86 to 88 (duties of employer who deducts union contributions), for the purposes of the application of that Chapter to trade unions or unincorporated employers' associations having their head or main office outside Northern Ireland;

(c) section 287 (offshore employment);

(d) section 294 (reciprocal arrangements with Northern Ireland);

(e) Schedule 1 (repeals) so far as it relates to enactments which extend to Northern Ireland, other than the Conspiracy and Protection of Property Act 1875;

(f) Schedules 2 and 3 (consequential amendments, transitional provisions and savings), so far as they relate to enactments which extend to Northern Ireland;

but this Act does not otherwise extend there.

(3) Subsection (2)(b) does not affect the operation of Article 71(2) to (4) of the Trade Union and Labour Relations (Northern Ireland) Order 1995 (application of Northern Ireland law to contributions by members in Northern Ireland); and the closing words of that subsection do not affect the operation in relation to persons or property in Northern Ireland of any provision of Chapter VII of Part I (amalgamations and similar matters) which is capable of so applying as part of the law of England and Wales or Scotland.

Policy on the listing of international organisations

6. Following my review of the list of trade unions I published a policy, on 28 July 2022, which set out my views on whether international organisations could be considered to meet the definition of a trade union within the 1992 Act. I have set out that policy in Annexe A.

IAATW's application

7. There are two issues for me to consider when assessing IAATW's application. The first is whether, as a federated trade union, it is comprised wholly or mainly of "constituent or affiliated organisations" which are themselves comprised wholly or mainly of "workers". The second is whether IAATW is "regulating relations" within the meaning of section 1 of the 1992 Act.

Membership

8. IAATW is a federated trade union; the question as to the composition of a federated trade union is usually satisfied by demonstrating that most of its affiliate or member organisations are already included on my list. That is not the case for IAATW; only one of its 21 members, the App Drivers and Couriers Union (ADCU), is based in the UK and included on my list. The remaining 20 members operate across, and are based in, 14 countries. In addition, its application for listing provided the names of 9 officers with addresses in the United States Indonesia, Canada, Panama, Nigeria, Chile,

India and the United Kingdom. ADCU appears to have a membership of 7,082. Taken together IAATW's members and affiliates represent approximately 77,083 members. It is clear, therefore, that IAATW's membership is not wholly or mainly comprised of UK workers.

9. The next question is, therefore, whether, when adopting my policy on international trade unions I am right to limit the definition of worker to someone who is working in the UK and/or working under a contract governed by UK law. IAATW does not agree that the 1992 Act explicitly limits the definition of worker in this way. It argued that, in the absence of an explicit restriction within the Act, I should consider all of the members of its constituent organisations to be workers within the meaning of the 1992 Act wherever they are based. This is because all of those members are working under a contract of employment or similar which would, in their view, share the principal characteristics of a contract under English law.
10. I agree that, on the face of it, the 1992 Act places no explicit geographical restriction on the definition of a trade union or the definition of a worker. Section 301 of the 1992 Act, however, limits its extent to England, Scotland and Wales and, in only specified ways, Northern Ireland. Consequently, I am satisfied that, when considering whether an organisation is wholly or mainly comprised of workers I can only consider those who are either working in the UK or working under a contract of employment governed by UK law. I have not seen any evidence from IAATW to show that its members or affiliates are wholly or mainly comprised of workers within the UK or working under contracts governed by UK law. For that reason, I cannot add IAATW to the list of trade unions.
11. It is worth noting that this is an approach taken by similar tribunals such as the Employment Tribunal and the Employment Appeals Tribunal who do not consider issues which arise outside their jurisdiction.

12. I would add that, as set out in my policy at Annexe A, I have no discretion to add an organisation to the list which does not fall within the definition set out in the 1992 Act. This does not, however, prevent IAATW from working within the UK. Nor does it prevent IAATW from making an application in the future should its membership change.

Regulation of relations

13. Because of my conclusion about IAATW's composition, I do not need to consider whether it has a principal purpose to regulate relations between workers and employers or employers' associations; or between IAATW's constituent or affiliated organisations. Should IAATW wish to pursue an application in the future, however, they would need to show that this was explicitly set out in their rules or other governing instrument and that they were actively pursuing this purpose.

A handwritten signature in black ink, appearing to read 'Sarah Bedwell', with a horizontal line underneath it.

Sarah Bedwell

The Certification Officer

Annexe A: the policy

All organisations which apply to be included in the Certification Officer's list must meet the statutory definition included in section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992.

The definition includes organisations which consist wholly or mainly of workers and whose principal purposes include the regulation of relations between employers and those workers. It also includes federated unions whose membership is made up wholly or mainly of trade unions who meet the statutory definition (or representatives of such unions) and whose primary purpose is regulation of relations between workers and employers (or their representative bodies) or between members of that organisation.

The Certification Officer's view is that the meaning of 'worker' set out at section 296 of the Act extends to those individuals who work under an agreement which would be recognised in UK law as a 'contract', or where the law accepts their status is akin to a contract. In practice, this is likely to include contracts which are either entered into in the UK, or state that they are governed by UK law.

It follows that any organisation seeking to be included in the list will need to demonstrate that they are made up wholly or mainly of workers who have a contract which is effective in the UK, or a status akin to such. Federated organisations will need to demonstrate that their members, or those organisations which their members represent, are made up wholly of mainly of such workers.

Background

There are a number of international trade unions whose membership extends beyond the UK. Some of those organisations are included in the CO's list of trade unions.

The CO's view is that it is unlikely, for the reasons given above, that many of these organisations meet the statutory definition of a trade union. In addition, she believes that, whether or not these organisations are listed, it would be difficult for her to exercise her statutory powers over an organisation which is not operating within her jurisdiction. She may not, for instance, be able to enforce the statutory reporting requirements or any order which she has made following a complaint from a union member. Similarly, it would not be appropriate for her to include international organisations which undertake no, or limited, work within her jurisdiction. She has also taken into account the approach taken by other tribunals, such as the Employment Tribunal and Employment Appeal Tribunal, who will only deal with cases where they have jurisdiction.

This interpretation does not prevent international organisations from working within the UK. Nor does it prevent any UK trade union from joining an international organisation. The policy is limited to the inclusion in the CO's list of trade unions. If an international organisation wishes to seek inclusion in the list then it is open to them to create a sufficiently independent branch, or section, operating in Great Britain which meets the statutory definition. The CO does not, therefore, consider that her policy interferes with any rights under Article 11 of the ECHR. There are a small number of organisations included in the current list who do not appear to meet this definition because the majority of their members, or the people who their members represent, do not work under a UK contract. The CO has some discretion, under s4 of the Act, to continue to include those organisations within the list. She will exercise her discretion where there are circumstances which justify greater flexibility. It is important to note, however, that she has no such discretion when considering applications to join the list.

The CO has not yet identified any international employers' association on her list. Should this issue arise she will adopt a similar approach as set out above.